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REMARKS

This Amendment is in response to the Office Action dated October 17, 2004. In the Office Action, claims 1-14 were rejected. With this Amendment, claims 1 and 2 are amended. It is respectfully submitted that all pending claims are in condition for allowance. Favorable action is respectfully requested.

Claims 2-5 and 9-11 were objected as including an informality. Accordingly, claim 2 has been amended. It is respectfully requested that these claim objections be withdrawn.

Claim 1 was rejected under 35 U.S.C. §103(a) as being unpatentable over the article "ArsDigita Powers Nation's Leading Wine Exchange: WineAccess.com" (hereinafter "ArsDigita").

It is respectfully submitted that ArsDigita fails to teach or suggest all of the claim elements of claim 1. ArsDigita fails to teach or suggest "a host system, operably connected to the in-store systems and the subscriber systems, for processing, storing, and communicating inventory data between the plurality of subscriber systems and the plurality of in-store systems" as recited in claim 1. On page three of the Office Action, the Examiner states that ArsDigita implies that the WineAccess.com website is hosted. It is respectfully submitted that no matter whether it can be implied that the WineAccess.com is hosted, it can not be implied that the WineAccess.com website includes a host system for communicating inventory data between the plurality of subscriber systems and the plurality of in-store systems. An element in the prior art can only be inherent when it is necessarily present, but not expressly described or recognized. "Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Oelrich*, 212 USPQ 323, 326 (C.C.P.A. 1981). The Examiner has drawn conclusions from the cited reference and improperly read elements into the cited reference. However, as taught and suggested in the cited reference, WineAccess.com merely includes a list of types of wines and what seller sells each type of wine. The web site can direct a consumer to a web site for a particular store that sells a particular type of wine. The cited references does not teach or suggest "processing, storing, or communicating data between the plurality of subscriber systems and the plurality of in-store systems" as recited in claim 1. It is respectfully submitted that claim 1 is in condition for allowance.

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Claims 2 was rejected under 35 U.S.C. §103(a) as being unpatentable over ArsDigita in view of the Microsoft Press Computer Dictionary. It is respectfully submitted that claim 2 is allowable over the cited references as depending on allowable base claim 1.

Claims 3-5 and 9-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over ArsDigita in view of the Microsoft Press Dictionary as applied to claim 2 and further in view of an official notice. The official notice being that "it is well known that for commercial Web sites to identify the merchants whose Web sites they are". It is respectfully submitted that claims 3-5 and 9-11 are in condition for allowance as at least depending on allowable base claim 1. However, the Applicant respectfully disagrees with the Examiner's taking of official notice, and assessment of the cited references. It is respectfully believed that the rejection is improper.

In claim 3, the combination of cited references fail to teach or suggest "a memory database used to store merchant identification data, the sales transaction data and the inventory data". Even assuming, arguendo, that the Examiner is correct in the assertion that it is well known for commercial web sites to identify the merchants whose web sites they are, that finding is still insufficient to form an obviousness rejection. First, the Examiner has failed to show a reference in support therefore, as required by MPEP 2144.03. Furthermore, the official notice still does not teach or suggest "a memory database used to store merchant identification data". The Examiner only takes official notice that web sites identify the merchants whose web sites they are. This official notice does not teach how the web sites identify the merchants as claimed in claim 3.

In addition, the Examiner states on page four of the Office Action that the cited reference implies that data is transmitted in real-time. Again, an element can only be inherent when it is necessarily present, but not expressly described or recognized. However, the cited reference does not disclose that a host system processes, stores and communicates inventory data as discussed above let alone disclose that the inventory data stored in the host system is updated in real-time. Real-time transmission is not necessarily present.

In claim 5, the combination of cited references fail to teach or suggest "a host system database used to store the inventory data, merchant identification data, and merchant network address data", "a host system communicator used to receive and transmit data in substantially real-time between a each in-store system and each subscriber system, using said communication

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network" and "a data distributor to process data requests from each subscriber system". It is respectfully submitted that it can not be implied that the host system includes a host system database as recited, a host system communicator as recited and a data distributor as recited. In particular, the combination of cited references do not teach or suggest merchant identification data in the host system database let alone that the identification data is a network address as claimed in claim 9. As discussed in detail above, an element in the prior art can only be inherent when it is necessarily present, but not expressly described or recognized. The examiner has drawn one implication from the combination of cited references, however, other implications can also be drawn. Therefore, the implication drawn by the Examiner is not inherent.

It is respectfully submitted that claims 3-5 and 9-11 are in condition for allowance. Favorable action is respectfully requested.

Claims 6, 12, 13 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over ArsDigita. It is respectfully submitted that ArsDigita fails to teach or suggest all of the claim elements of claim 6. ArsDigita fails to teach or suggest "transmitting current inventory data, merchant identification data, and merchant network address data from an in-store system to a host system over the communication network", "indexing and storing the current inventory data, merchant identification data, and merchant network address data using a host system database at the host system" and "processing requests for inventory data with a data distributor in the host system using said indexed and stored inventory data, merchant identification data and merchant network address data in response to receiving a request for inventory data from a subscriber system". It is respectfully submitted that implying that ArsDigita discloses all of the above elements is improper. ArsDigita merely discloses that WineAccess.com builds a web site for a seller using a seller's point of sale system to update that store's inventory of wines. WineAccess.com matches consumers to a seller based on a type of wine that the consumer desires. WineAccess.com matches consumers to sellers by looking at a database of wine types. An element in the prior art can only be inherent when it is necessarily present, but not expressly described or recognized. None of the elements of claim 6 are necessarily present in the cited reference. In particular, there is no teach or suggestion in the cited reference that current inventory data is transmitted to a host system.

It is respectfully submitted that claim 6 is allowable over the cited reference. In addition,

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claims 12-14 are in condition for allowance as at least depending on allowable base claim 6.

Claim 7 and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over ArsDigita and further in view of the official notice. The official notice being that "it is well known to use network address data to initiate communication with a remote computer". Even assuming, arguendo, that the Examiner is correct in the assertion that it is well known that network address data is used to initiate communication with a remote computer, that finding is still insufficient to form an obviousness rejection. First, the Examiner has failed to show a reference in support therefore, as required by MPEP 2144.03. Furthermore, the official notice still does not teach or suggest that a host system is in communication with an in-store system. The cited references merely suggest that WineAccess.com establishes web sites for different stores and knows what types of wines those stores carry. There is no indication that there is any communication between a host system and an in-store system let alone that merchant identification data is communicated along with inventory data.

It is respectfully submitted that claims 7 and 8 are in condition for allowance. Favorable action is respectfully requested.

In conclusion, it is respectfully submitted that in light of the above remarks, claims 1-14 are patentable over the cited references. Reconsideration and allowance of claims 1-14 are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: 

Leanne R. Taveggia, Reg. No. 53,675  
Suite 1600 - International Centre  
900 Second Avenue South  
Minneapolis, Minnesota 55402-3244  
Phone: (612) 334-3222 Fax: (612) 334-3312

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